

## FIRST DIVISION

[ A.M. No. MTJ-04-1557, October 21, 2004 ]

**MARTIN DEL ROSARIO, COMPLAINANT, VS. JUDGE ERANIO G. CEDILLO, MUNICIPAL TRIAL COURT, MEYCAUAYAN, BULACAN, RESPONDENT.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

The instant administrative complaint for gross ignorance of the law and conduct prejudicial to public service, stemmed from the respondent Judge's January 28, 2003 and July 22, 2003 resolutions which dismissed the cases for violation of Batas Pambansa No. 22 (BP 22) filed by complainant Martin Del Rosario.

In his sworn complaint,<sup>[1]</sup> complainant alleged that he extended 12 million peso loan to Filipina A. Estrella, secured by 3 postdated Far East Bank and Trust Company (FEBTC) checks<sup>[2]</sup> and 2 real estate mortgages. It turned out, however, that the transfer certificate title of the lots were fake. A case for falsification of public document against Estrella is pending with the Regional Trial Court of Malolos, Bulacan, docketed as Criminal Case Nos. 1219 & 1220-M-2001.

On the other hand, the 3 checks were dishonored for insufficiency of funds upon presentment on their due dates. Hence, complainant filed Criminal Case Nos. 98-27287, 98-27288 and 98-27289, for violation of BP 22 against Estrella. The cases were raffled to Branch 1 of the Municipal Trial Court of Meycauayan, Bulacan, presided by respondent Judge.

At the pre-trial, the parties entered into the following stipulation of facts:

- (1) That accused admit[s] that account number 005024-00737-9 is under the name of Filipina A. Estrella;
- (2) That accused Filipina Estrella has a checking account or current account with Far East Bank and Trust Company, Alabang Branch;
- (3) That the signature appearing on check nos. 24A0001528P; 24A0001529P; and 24A0001527P are all signatures of accused Filipina Estrella;
- (4) That the aforementioned checks were issued by the accused to complainant Martin del Rosario;
- (5) That these checks were dishonored by reason of DAIF [Drawn Against Insufficient Funds].<sup>[3]</sup>

After the prosecution rested its case, Estrella, with prior leave of court, filed a Demurrer to Evidence claiming, *inter alia*, that the requisite notice of dishonor was not sent to her. The latter contended that the registry return receipt bearing the signature "A. Estrella" was not sufficient to prove that the notice of dishonor in the form of a demand letter presented by the prosecution was truly received by her or her authorized agent. She added that the demand letter was defective because it sought payment of the amount of P13,680,000.00 when the total amount of the dishonored checks was only P12,680,000.00, and that said demand did not state the account number as well as the amount, date and number of the checks.

On January 28, 2003, the trial court granted the demurrer to evidence on the ground that the prosecution failed to establish that a notice of dishonor was sent to and received by Estrella. It held that the demand letter's registry return receipt with a signature "A. Estrella", which was neither authenticated nor identified, does not prove beyond reasonable doubt that Estrella or her duly authorized agent received the notice of dishonor. The court *a quo*, however, did not address her civil liability. The dispositive portion of the resolution granting the demurrer, reads:

WHEREFORE, this court finds the Demurrer to Evidence impressed with merit. Accordingly, the above-captioned cases (Crim. Cases Nos. 98-27287, 98-27288 and 98-27289) are hereby DISMISSED.

SO ORDERED.<sup>[4]</sup>

Complainant filed a motion for reconsideration seeking a definite ruling of the court on the civil aspect of the BP 22 cases against the accused.

On July 22, 2003, the respondent Judge amended his January 28, 2003 resolution, specifying the dismissal of the civil aspect of the criminal cases as follows:

In sum, this court finds that the prosecution failed to prove adequate notice of dishonor of the subject checks on accused's part, thus preceding any findings of PRIMA FACIE evidence of knowledge of insufficiency of funds. Neither does the prosecution adequately establish by preponderance of evidence accused[s] civil liability as it appears that the latter have executed two (2) Real Estate Mortgage in favor of the private complainant as security or collateral for said loans.

WHEREFORE, this court finds the Demurrer to Evidence impressed with merit. Accordingly, the above-captioned cases (Crim. Cases Nos. 98-27287, 27288 and 27289) are hereby DISMISSED. The civil case deemed included in criminal case is hereby DISMISSED on the ground of absence of preponderance of evidence.

SO ORDERED.<sup>[5]</sup>

On October 13, 2003, complainant filed a petition for relief from judgment with motion to withdraw motion for reconsideration, seeking to set aside the July 22, 2003 resolution of the trial court only insofar as the civil aspect of the BP 22 cases is concerned.<sup>[6]</sup> He thereafter filed<sup>[7]</sup> a motion for the inhibition<sup>[8]</sup> of respondent Judge which the latter granted.

On November 3, 2003, complainant instituted the instant complaint charging respondent Judge with gross ignorance of the law and conduct prejudicial to public service for dismissing the civil and criminal aspects of the BP 22 cases.

In his Comment,<sup>[9]</sup> respondent Judge averred that he is under no compulsion to hold the accused civilly liable absent preponderant evidence in support thereof. He added that an administrative complaint is not the appropriate remedy for every act of a Judge deemed aberrant or irregular where a judicial remedy exists and is available, such as a motion for reconsideration or an appeal. Thus, if the complainant disagrees with respondent's resolution or order, the remedy is to resort to judicial remedies, which he in fact did by filing a motion for reconsideration and, lately, a petition for relief from judgment with motion to withdraw motion for reconsideration, now pending and awaiting the designation of another Judge in view of his inhibition from the case.

On the basis of its evaluation, the Office of the Court Administrator found that the respondent judge was guilty of gross ignorance of the law in dismissing **both** the criminal and civil aspects of the BP 22 cases. It thus recommended that the instant case be re-docketed as a regular administrative matter and that respondent Judge be suspended for four (4) months without pay and other benefits.<sup>[10]</sup>

Upon being required by the Court,<sup>[11]</sup> respondent Judge manifested that he is willing to submit the case for decision on the basis of the pleadings submitted.<sup>[12]</sup> Complainant, on the other hand, failed to file his manifestation hence, the Court is constrained to dispense with the filing thereof.

For a violation of BP 22 to be committed, the following elements must be present:

- (1) the making, drawing, and issuance of any check to apply for account or for value;
- (2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
- (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

<sup>[13]</sup>

As to the second element it must be shown that the issuer, at the time of the check's issuance, had knowledge that he did not have enough funds or credit in the bank for payment thereof upon its presentment. Since the second element involves a state of mind which is difficult to verify, Section 2 of BP 22 creates a presumption *juris tantum* that the second element *prima facie* exists when the first and third elements of the offense are present. This presumption, however, does not arise when the issuer pays the amount of the check or makes arrangement for its payment within five banking days after receiving notice that such check has not been paid by the drawee. The law gives the accused an opportunity to satisfy the amount indicated in the check upon receipt of a notice of dishonor. Thus, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence *only after it is proved that the issuer had received a notice of*